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Paper No.

Intellectual Property Department
Cubist Pharmaceuticals, Inc.
65 Hayden Avenue
Lexington MA 02421

MAILED

MAY 17 2010

In re Application of : **OFFICE OF PETITIONS**
Oleson et al. :
Application No. 10/082,544 :
Patent No.: 6,852,689 : DECISION ON PETITION
Filed: February 20, 2002 : PURSUANT TO
Issued: February 8, 2005 : 37 C.F.R. § 1.28(c)
Attorney Docket No.: C053-03/02 :
US :
Title: METHODS FOR :
ADMINISTRATION OF ANTIBIOTICS :
:

This is a notice regarding your request for acceptance of a fee deficiency submission pursuant to 37 C.F.R. § 1.28, received on January 27, 2010. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 C.F.R. § 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

The Office no longer investigates or rejects original or reissue applications under 37 C.F.R. § 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this notice is intended to imply that an investigation was done.

Petitioner has identified the particular type of fee that was erroneously paid as a small entity, when the small entity fee was actually paid, the small entity fee that was actually paid, the deficiency owed amount, and the total deficiency payment owed.

The deficiency payment has been deducted from Deposit Account number 50-1986.

Your fee deficiency submission pursuant to 37 C.F.R. § 1.28(c) is hereby accepted. The petition is **GRANTED** accordingly.

This patent is no longer entitled to small entity status. Accordingly, all future fees paid in this patent must be paid at the large entity rate.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.¹

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

¹ Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for Petitioner's further action(s).